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Book Review

International Law & Ethnic Conflict **By David Wippman** **Ithaca: Cornell University Press, 1998, pp. 354**

REVIEWED BY SATVINDER S. JUSS*

Good books are a blessing, and blessings are far and between, which is why David Wippman is to be commended for having assembled an engrossing collection of contributions on international law and ethnic conflict.¹ Wippman's book is not simply a collection of essays, but a voyage of discovery, a glimpse into a new trend in international law. The book is about how we see, and should see, ethnic conflict in the world today. The wealth of information and the thought-provoking commentary in its contributions compel the reader to consider how ethnicity influences the international system. Only in the 1990s have theories of international relations begun to address the issues of ethnicity, self-determination, and nationalist sentiment.²

Ethnic nationalism received treatment in the current decade when issues of self-determination and succession rose dramatically at the end of the Cold War. International lawyers had rarely addressed these concerns except from a purely historical approach. They asserted that the principle of self-determination was the legal and moral foundation of decolonization. Its postcolonial application was much less certain. Before this decade, self-determination was recognized for those groups of people who were under colonial, alien, or racist domination. International lawyers thought that this principle could not apply to the population of a sovereign State under a government that prohibited systematic

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1. INTERNATIONAL LAW AND ETHNIC CONFLICT (David Wippman ed., 1998).

2. See, e.g., HURST HANNUM, AUTONOMY, SOVEREIGNTY, AND SELF-DETERMINATION (1990); ETHNIC CONFLICT AND INTERNATIONAL SECURITY (Michael E. Brown ed., 1993); Jack Snyder, *The New Nationalism: Realist Interpretation and Beyond*, in THE DOMESTIC BASES OF GRAND STRATEGY 179-200 (Richard Rosecrance & Arthur A. Stein eds., 1993).

racial or religious discrimination, even though it might on occasion be oppressive. The principle of self-determination was restricted in this manner because of the "fear of States that by authorizing an unqualified right of self-determination they might allow secession and dismemberment in sovereign States."³ In the contemporary world, however, self-determination was claimed more for its "internal" aspect (right to democratic self-government) than for its "external" aspect (independence from foreign domination or control).⁴ Some writers have advocated self-determination leading to succession,⁵ but it had not been recognized as a legal principle by the time of the outbreak of hostilities in 1991 in the former Yugoslavia. Nevertheless, "the idea of a principle or right of self-determination is firmly embedded in the global consciousness," and "today a multitude of indigenous ethnic, and other groups have invoked the concept of self-determination in formulating demands against actual or perceived oppression of the status quo."⁶

Today the principle of self-determination has scarcely any limitations on its possible applications. Part of the value in Wippman's collection of essays lies in its demonstration of some limitations. It has been said that "the indigenous peoples rights movements is perhaps the most striking development in the theory and practice of international law since the United Nations issued the Universal Declaration of Human Rights in 1948."⁷ The thrust of this movement has focused on collective rights, as opposed to individual rights, which have hitherto been the concern of international law. Emphasis on internal rights now threatens established sovereign States: "[t]he flood of claims to internal self-determination has been sweeping the globe, from the Canadian Northlands, Quebec, and endangered Amazonian rainforests, to the embattled horn of Africa, the Kurdistan of undying dreams, and the shaky post-communist States

3. ANTONIO CASSESE, *INTERNATIONAL LAW IN A DIVIDED WORLD* 134 (1986).

4. See, e.g., Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L L. 46 (1992).

5. The most extensive legal approach is that of Lee C. Buchheit. LEE C. BUCHHEIT, *SECESSION: THE LEGITIMACY OF SELF-DETERMINATION* (1978). See also ALLEN BUCHANAN, *SECESSION: THE MORALITY OF POLITICAL DIVORCE FROM FORT SUMTER TO LITHUANIA AND QUEBEC* (1991); Ved P. Nanda, *Self-Determination Outside the Colonial Context: The Birth of Bangladesh in Retrospect*, in SELF-DETERMINATION: NATIONAL, REGIONAL, AND GLOBAL DIMENSIONS 193 (Yonah Alexander and Robert A. Friedlander eds., 1980).

6. See S. James Anaya, *A Contemporary Definition of the International Norm of Self-determination*, TRANSNAT'L L. & CONTEMP. PROBS. 131, 132 (1993). See also MORTON. H. HALPERIN ET AL., *SELF-DETERMINATION IN THE NEW WORLD ORDER* 123-60 (1992).

7. See Allen Buchanan, *The Role of Collective Rights in the Theory of Indigenous Peoples' Rights*, 3 TRANSNAT'L L. & CONTEMP. PROBS. 89, 90 (1993).

of Eastern Europe and the former Soviet Union.”⁸ Although ethnic conflict has existed for a long time, the outbreak of ethnic rivalries in the former Soviet Union and now in Central Africa has demanded greater attention in the last decade. The lure of new challenges—in the form of new threats—to world peace and order has become irresistible. Wippman’s book deserves an audience simply for having addressed this.

Other questions, however, deserve answers. For example, is ethnic conflict different and, if so, how? The conceptual challenge is whether scholars and policymakers can demonstrate the existence of a causal link between ethnic nationalism and intrastate conflict. The escalating discord of the 1990s in the former Yugoslavia has aptly demonstrated the need to address these questions. The Balkans conflict led to the North Atlantic Treaty Organization’s (NATO) first out-of-area actions, the largest United Nations peacekeeping operation in history, and the looming spectre of war spreading to other parts of the Balkans. Yet, the dominant realist approach in international relations provided little explanation for the violent ethnic conflict, although it was nothing new. At least eleven million people have been killed since 1945 in ethnic struggles.⁹ Ethnic conflict is potentially a problem for all States because only a handful of States are ethnically homogeneous. If it has gone unrecognized, it is at least partly because liberal theory has long cherished the hope that ethnicity would disappear as a significant political force under the leveling forces of modernization.¹⁰

It is a mistake to think that ethnic conflict only potentially affects distant lands. Even the paradigm of liberal society, the United States, is not free from ethnic claims. The United States case of *Kiryas Joel* in 1994 is a stark reminder of the pressing claims of minority groups in contemporary liberal societies.¹¹ This case concerned a highly insular and traditional religious community of orthodox Hasidic Jews. Their members worshiped and lived together. In 1989, the New York legislature passed Chapter 748, which carved out a public school district to preserve the cultural, linguistic, and religious

8. Peter Juviler, *Contested Ground: Rights to Self-Determination and the Experience of the Former Soviet Union*, 3 TRANSNAT’L LAW & CONTEMP. PROBS. 71, 72 (1993).

9. See Robin M. Williams, Jr., *The Sociology of Ethnic Conflicts: Comparative International Perspectives*, 20 ANN. REV. SOC. 49, 51, 72 (1994).

10. See MILTON J. ESMAN, ETHNIC POLITICS 12, 17-18 (1994) (observing the hope that “in the wake of economic development and nation-building, ascriptive loyalties would lose their social function and gradually wither away” but that the reality is that modernization in fact tends to “reinvigorate” rather than supplant ethnic solidarities).

11. Board of Educ. v. Grumet, 512 U.S. 687 (1994).

needs of their disabled children. New York's imaginative law allowed Hasidic students to attend classes with members of their own sect in a familiar atmosphere. The state law, however, allowed only teaching of secular subjects; it forbade the teaching of the Hasidim's religious tenets.¹² Without imposing any costs on other citizens, New York's legislature had adopted an avowedly liberal approach in which the political and cultural majority set out to protect the practices of an unconventional minority. Yet, the Supreme Court struck down the statute as a violation of the Establishment Clause of the First Amendment. The Supreme Court held that the statute represented an unconstitutional means of providing the disabled Satmar children with state and federal special education services to which they were entitled by law.¹³

The case has generated widespread commentary.¹⁴ Some commentators have tried to discuss the role of "enclave" groups, which seek to segregate themselves from the larger community in a constitutional democracy.¹⁵ It has been suggested that such groups have a positive role in nourishing democracies. First, it is inherently discriminatory to privilege heterogeneous groups over homogeneous groups for public governance.¹⁶ Second, the democratic polity owes it to certain enclave groups to allow them to exercise some power over their own communities, because even the best run democracies will inevitably create injustices for some of their members.¹⁷ Third, the intrinsic value of personal sovereignty itself dictates that we should retain individually the "right or power to make decisions concerning central attributes of personhood."¹⁸

Although these arguments plausibly apply to the private sphere as a necessary incident of democratic rights, they unlikely extend to publicly-provided state education. First, it separates the community by providing political entitlements to a group because of their distinctive collectivity and "runs the risk of establishing and/or reinforcing castes in a polity that is otherwise committed to eradicating caste as the basis for distributing basic

12. See *id.* at 690-96.

13. See *id.* at 709-10.

14. See, e.g., Joanne Kuhns, Note, *Board of Education of Kiryas v. Grumet: The Supreme Court Shall Make No Law Defining an Establishment of Religion*, 22 PEPP. L. REV. 1599 (1995); Thomas C. Berg, *Slouching Towards Secularism: A Comment on Kiryas Joel School District v. Grumet*, 44 EMORY L.J. 433 (1995); Susan E. Acklin, Note, *Board of Education of Kiryas Joel Village School District v. Grumet: Another Snub for Lemon Draws It Nearer To Its Probable Demise*, 41 LOY. L. REV. 43 (1995).

15. For a discussion of "enclave" groups, see Jane Mansbridge, *Using Power/Fighting Power*, 1 CONSTELLATIONS 53 (1994).

16. Abner S. Greene, *Kiryas Joel and Two Mistakes About Equality*, 96 COLUM. L. REV. 1, 4-5 (1996).

17. See Mansbridge, *supra* note 15, at 56.

18. James E. Fleming, *Securing Deliberative Autonomy*, 48 STAN. L. REV. 1, 50 (1995).

political incidents.”¹⁹ Second, it misrepresents the political community because “the presence of children from different parts of this larger community tells the children in these classrooms that they share a political association with people who are different from them.”²⁰ Finally, “when Satmar children receive a false impression of who is in their political community, they also receive a false impression about the skills they need to develop in order to negotiate their public lives.”²¹ These problems suggest that the intrinsic value of groups, as a moral good, deserves greater consideration. Rights then acquire justification by referring back to a shared feature or common basis—namely, existence defined in terms of personhood, communality, and sociality.²²

Liberals have always mistrusted ethnic solidarities as a source of communal conflict—a conflict between civic nationalism (i.e., cosmopolitan, inclusive, liberal, democratic conceptions of the ideal polity) and ethnic nationalism (i.e., narrow, exclusivist, authoritarian notions). The conflicts in Azerbaijan, Bosnia, Rwanda, Sri Lanka, and the Sudan amply demonstrate the Liberals’ distrust of ethnic claims. The Liberal perspective has suffered attack because it has failed to promote human dignity fully. The scholarly writings of Communitarians most notably question the central tenets of Liberal orthodoxy. Communitarians maintain that liberal theorists grossly underestimate the centrality of ethnicity and communal affiliation to personal identity because they overlook the importance of culture and group. Liberal theory, they say, falsely treats individuals as wholly autonomous agents when individuals actually exist as part of a larger community and culture. The problem for international law, as Wippman rightly recognizes at the outset of his book,²³ is that it has never resolved the tension between these antithetical doctrines.²⁴ Rather, liberal theory has exercised strong influence on the norms of international law, establishing the dominant paradigm that regulates questions of State formation, group claims, and individual rights. Today, therefore, the international community has no principled or fully coherent political or legal response to ethnonationalist claims. Separatist claims produce haphazard and disjointed international

19. Judith Lynn Failer, *The Draw and Drawbacks of Religious Enclaves in a Constitutional Democracy: Hasidic Public Schools in Kiryas Joel*, 72 IND. L.J. 383, 400 (1996).

20. *Id.*

21. *Id.* at 401.

22. See Ronald R. Garet, *Communality and Existence: The Rights of Groups*, 56 S. CAL. L. REV. 1001, 1001-02 (1983).

23. WIPPMAN, *supra* note 1, at 6.

24. Cf. Martti Koskenniemi, *National Self-Determination Today: Problems of Legal Theory and Practice*, 43 INT’L & COMP. L.Q. 241, 250 (1994).

responses.²⁵

What is surely needed is an evolving framework for group rights. Arguments for what constitutes an ethnic group remain indeterminate, unclear, and not necessarily helpful. The argument for the moral value of groups in the best democratic societies is powerfully demonstrated by the British case of *Dawkins* in 1993.²⁶ This case demonstrates an unnecessary denial of the common basis in personhood, communality, and sociality. Dawkins was a Rastafarian, a movement that began in the 1930s, with the majority of their adherents being Jamaicans. They shared geographical origin, common interests, idiosyncratic tastes of literature, poetry, and music. They also shared distinct customs, such as a refusal to cut hair, to shave, to observe dietary laws, and prohibitions on homosexuality and contraception. They experienced life as minorities, frequently oppressed because their distinctive appearance singled them out for criticism. Dawkins filed an employment discrimination case when an employer, a van driving company, offered him a job but then required him to cut his dreadlocks. His claim arose under the British Race Relations Act of 1976, which forbade discrimination against "a group of persons defined by reference to . . . ethnic . . . origins."²⁷ The employers conceded that Dawkins had been refused employment because he was a Rastafarian. The employers, however, denied that Rastafarians constituted a distinct ethnic group.²⁸

The Industrial Tribunal upheld his complaint, observing that the movement had maintained itself for the past sixty years and had a sufficient degree of historical permanence. On appeal, the Employment Appeal Tribunal rejected this view and held instead that Rastafarians constituted only a religious group. They found insufficient evidence to distinguish them from the rest of the Afro-Caribbean community. The Tribunal declared that "[i]t cannot reasonably be said that a movement which goes back for only 60 years, i.e. within the living memory of many people, can claim to be long in existence."²⁹ The Court of Appeal upheld that view, arguing that although Rastafarians are a separate group with identifiable characteristics, they have not established some separate identity by reference to their ethnic origins. Under British law, they found that "ethnic" has a racial flavor. Comparing Rastafarians with the rest of the Jamaican community meant that there was nothing to set them aside as a

25. WIPPMAN, *supra* note 1, at 7.

26. *Dawkins v. Dep't of the Env't*, [1993] I.C.R. 284 (Eng. C.A. 1993).

27. *Id.*

28. *Id.*

29. *Crown Suppliers v. Dawkins*, [1991] I.C.R. 583 (Employment App. Trib. 1993) (Tucker, J.).

separate ethnic group.³⁰

Although a case like this would almost certainly not occur in the United States, because of the Freedom of Religion Clause of the First Amendment, it nevertheless helps demonstrate how unredressed ethnic tensions can grow and spill into the international arena without a proper framework of group rights as a moral value for democratic society. The Court of Appeal in *Dawkins* concluded that "it is not enough for Rastafarians now to look to a past when their ancestors, in common with other peoples in the Caribbean, were taken there from Africa. They were not a separate group then. . . . One can understand and admire the deep affection which Rastafarians feel for Africa and their longing for it as their real home. But . . . the Court is concerned with the language of the statute."³¹ This case no doubt provided little comfort to Dawkins and his community, having laid seeds of communal dissonance.

The post-Cold War era has exposed groups from ethnically-mixed regions in the former crumbling empires. Ethnic nationalism begets ethnic conflict, which risks spillage into the international arena. The creation of ethnically pure States, however, is most decidedly not the answer. The twentieth century is littered with examples of this, with grave threats to peace arising from partitions of previously peaceful societies along ethnic or religious distinctions.³² This acute paradox is a serious threat to international peace and stability, especially as the number of ethnic, cultural, and religious conflicts in the world steadily increase. Yet, it is salutary to remember that violent interstate conflict is caused not by ethnic sentiment, nor by external security concerns, but rather by the dynamics of intragroup conflict.³³ The external conflict, although justified and described in terms of relations with other ethnic groups and taking place within that context, has its main core within the State, among members of the same ethnicity. The modern approach in international law fails to deal with ethnic claims or with ethnic conflict adequately because it is basically focused on external security concerns. Under this approach, the conflictive behavior in the name of ethnic nationalism is a response to external threats to the State (or to the ethnic group).³⁴ What has not been squarely faced by modern scholars and

30. *Id.*

31. *Dawkins*, [1993] I.C.R. 284 (Eng. C.A. 1993).

32. The primary examples include Greece-Turkey (1922), Ireland (1921), the Sudetenland (1938), India-Pakistan (1947), apartheid South Africa (1948), and Cyprus (1974).

33. The roots of conflictual nationalist policy are explored by Snyder, *supra* note 2. See also Jack Levy, *The Diversionary Theory of War: A Critique*, in *HANDBOOK OF WAR STUDIES* 259, 259-88 (Manus I. Midlarsky ed., 1989).

34. See John Mearsheimer, *Back to the Future: Instability in Europe After the Cold War*, INT'L

policymakers is the unpalatable fact that ethnic cleavages, deteriorating into violent conflict, are often provoked by elites within the political State to create a domestic political context in which ethnicity is presented as the only politically relevant identity. These elites successfully redefine the individual interests of the population at large in the form of a threat to the community, defined in ethnic terms, when faced with shifts in the structure of domestic, political, and economic power.

Wippman's collection of essays grapples with many of these issues. How should one review a book like this? Should one look at its overall structure or just review the individual essays? It pays to look at both. A structural examination reveals the thematic categories within which the individual essays play their role and the particular intellectual traditions in international law that they represent. The choice of themes discloses underlying motivations and other significant unstated political or cultural assumptions, which either inhibit or enhance our understanding of the role of international law in an era of widespread ethnic conflict. The thematic approach also reveals the practical use of the book. The post-Cold War international legal order is characterized by pragmatism.³⁵ International law currently emphasizes process, institutions, and dialogue instead of substance, normativity, and claims.³⁶ Most books—surprisingly even the international human rights books—focus exclusively on institutions.³⁷ They eschew the untidy questions of cultural relativism, gender, and development.³⁸

Wippman's engaging book rises to some of these challenges. Wippman carefully divides the volume into two parts: the first, under the heading *Ethno-*

SECURITY, Summer 1990, at 5; Barry Posen, *Nationalism, the Mass Army, and Military Power*, INT'L SECURITY, Fall 1993, at 80.

35. See PHILIP JESSUP, *TRANSNATIONAL LAW* (1956); Josef L. Kunz, *The Changing Law of Nations*, 51 AM. J. INT'L L. 77 (1957); David Kennedy, *The International Style in Postwar Law and Policy*, 1 UTAH L. REV. 7 (1994).

36. See ABRAM CHAYES ET AL., *THE INTERNATIONAL LEGAL PROCESS* (1986). See also Jose E. Alvarez, *Judging the Security Council*, 90 AM. J. INT'L L. 1 (1996).

37. See RICHARD LILLICH & HURST HANNUM, *INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW, POLICY, AND PRACTICE* (1995) (focusing on the U.N. and other regional organizations); FRANK NEWMAN & DAVID WEISSBRODT, *INTERNATIONAL HUMAN RIGHTS: LAW, POLICY AND PROCESS* (1996) (focusing on the law and other implementation mechanisms); *INTERNATIONAL HUMAN RIGHTS LAW AND PRACTICE: CASES, TREATIES AND MATERIALS* (Francesco F. Martin et al. eds., 1997) (focusing on the treaty law and other implementation mechanisms).

38. Importantly, one book that has done so recently is HENRY J. STEINER & PHILIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS: TEXT AND MATERIALS* (1996). See also Douglas Cassel, *Teaching International Human Rights Law*, 91 AM. J. INT'L L. 215 (1997) (recounting the deficiencies of human rights law teaching).

Nationalism and Legal Theory, deals with the general conceptual, philosophical, and legal issues that arise when international law is applied to an understanding of ethnic conflict; the second part, under the heading *Institutional and Policy Responses to Ethnic Conflict*, examines the institutional competence of the various international organizations in tackling ethnic conflict. Within both categories, the essays include the works of highly respected authors who write from a Western rights-based perspective as well as from critical legal perspectives.

What does this volume leave out? As far as some of the causes of ethnic conflict are concerned, the role of embattled political elites, using ethnicity as a basis for nationalist claims, is not the subject of a full discussion in its own right.³⁹ Wippman's book should have tackled this question head on because the general modern literature of ethnic conflict does not adequately reflect the proper dynamics of group conflict, and it neglects to give primacy to the role of ruling elites within these conflicts.⁴⁰ It is not for lack of evidence that this omission is commonplace in the literature. One only has to look at the Serbian leadership from 1987 onward to see how it actively created threats to the Serbs which it then defined and presented as external attacks on the Serbs. It deliberately provoked and fostered the outbreak of conflict along ethnic lines. It did so particularly in regions of Yugoslavia where interethnic relations had been historically good.⁴¹ Indeed, Yugoslavia never was witness to the kind of internecine religious wars seen in Western and Central Europe. Serbs and Croats never fought until this century.⁴² Inter-marriage rates were impressively high.⁴³ Yet, for all the shortcomings of scholarly analyses of interethnic conflict in the world today, the Yugoslav crisis has presented the terrifying apparition of what the future of international relations will be. This question thus deserves far greater scholarly analysis than it has hitherto received. There must be no equivocation in condemning the parody of rights of self-determination that are being asserted here.

39. It is salutary to remember that Fernando R. Teson's contribution does make the point, without looking at the role of endangered elites, that international law should not accord legitimacy to ethnic claims just because of shared group characteristics, unless this is in response to state terrorism. WIPPMAN, *supra* note 1, at 86-111.

40. See DONALD HOROWITZ, *ETHNIC GROUPS IN CONFLICT* (1985).

41. See Peter Maass, "Disloyal Serbs" *Share Plight of Opposition*, WASH. POST, Aug. 24, 1992, at 1.

42. See Sergei A. Romanenko, *National Autonomy in Russia and Austro-Hungary: A Comparative Analysis of Finland and Croatia-Slavonia*, in *NATIONALISM AND EMPIRE* (Richard L. Rudolf & David F. Good eds., 1992); IVO BANAC, *THE NATIONAL QUESTION IN YUGOSLAVIA: ORIGINS, HISTORY, POLITICS* (1984).

43. For example, 29% of Serbs living in Croatia married a Croat spouse in the 1980's. See Demografska statistika (Belgrade: Savezni, zavod za statistiku), 1979-1989 (annual) Table 5-3.

There is also no discussion of wider cultural changes in the world today, such as globalization. It is worth remembering that in an increasingly fluid society, globalization brings new pressures to bear on the preservation of distinct cultures. Cultural tensions have arisen, particularly since the 1980s, because of new global patterns of immigration and capital flow and new North-South relations of markets and the environment.⁴⁴ The very factors that cause a sense of borderlessness also force communities to look inwardly and determine what control they retain over their destinies.

Furthermore, Wippman and the contributors have omitted discussion of the important links between self-determination and development. This is an unfortunate omission, since both the United Nations World Conference on Human Rights and the General Assembly in the 1986 Declaration on the Right to Development has formally recognized the right to development.⁴⁵ The Declaration states at the outset that the right to development is "an inalienable human right" and links it to the "right of peoples to self-determination."⁴⁶ It is hardly surprising that this right has been referred to as the "alpha and omega of human rights, the first and last right" because it is "the core right from which all others stem."⁴⁷ Moreover, there is no essay on the increasingly vexing questions about the precise relationship between sociocultural rights and civil-political rights.⁴⁸

What are we to make of the omission of these ideas and the inclusion of others? Do Wippman's two themes tell us anything about the book's cultural and political assumptions? Are we able to relate this back to the book's essential structure and say that this only succeeds in turn to reflect what we

44. These are not necessarily in any way related to the new geo-political realignments following the breakup of the former Soviet bloc. See SATVINDER JUSS, DISCRETION & DEVIATION IN THE ADMINISTRATION OF IMMIGRATION CONTROL 28-30 (1997).

45. See Declaration on the Right to Development, U.N. GAOR, 41st Sess., Supp. No. 53 at 186, U.N. Doc. A/41/128 (1986). For a detailed discussion, see some of the most challenging writings of Philip Alston, *Making Space for Human Rights: The Case of the Right to Development*, 1 HARV. HUM. RTS. Y.B. 3 (1988); Philip Alston, *The Shortcoming of a "Garfield the Cat" Approach to the Right of Development*, 15 CAL. W. INT'L L. J. 510 (1985); Philip Alston, *A Third Generation of Solidarity Rights: Progressive Development or Obfuscation of International Human Rights Law?*, 29 NETHER. INT'L REV. 307 (1982). See also Satvinder Juss, *Global Environmental Change, Health, and the Challenge for Human Rights*, 5 IND. J. GLOBAL LEGAL STUD. 121, 156-59 (1997).

46. U.N. GAOR, 41st Sess., *supra* note 45, at 186.

47. Mohammed Bedjaoui, *The Right to Development*, in INTERNATIONAL LAW: ACHIEVEMENTS AND PROSPECTS 1177, 1182 (Mohammed Bedjaoui ed., 1991).

48. For a discussion in a different context, see Satvinder Juss, *The Coming of Communitarian Rights: Are "Third-Generation" Human Rights Really "First-Generation" Rights?*, 3 INT'L J. DISCRIMINATION & L. 159 (1998).

know to be the central ideological positioning of international legal discourse? The answer to these questions appears to be no. If we examine the individual contributions of its authors, we find that the book succeeds in making a major contribution to our understanding of the strengths and limitations of claims based on ethnicity. Of course, some questions are left unresolved. But many others are answered for the inquisitive reader. Many more are raised for fruitful rumination. This is the ultimate value of the book.

Wippman sets the tone in an introductory chapter by explaining the importance of ethnic conflict at the end of the Cold War. Like the other contributions to the book, Wippman's introduction provides information that should be more generally known, but often is not. He notes that three factors have caused the profound changes in the international system today. First, the demise of the rivalry between the United States and the former Soviet Union has caused a proliferation of virulent ethnic conflicts and raised ethnonationalism as the organizing principle in the pursuit of regional political power. Second, the end of bipolar competition has meant that, in recent years, the United Nations and other international organizations have been far more willing to intervene in the domestic affairs of States, thus creating new possibilities for great power cooperation around the world. Third, the collapse of socialism as an alternative ideology to political liberalism reflects the commitment of international organizations to insist on democratic governance as a prerequisite for international legitimacy.⁴⁹ Wippman nevertheless points out the problems for international law.

"Ethnic conflict" is not by tradition a natural category for legal analysis. Issues of armed conflict have historically been compartmentalized along State lines according to the Westphalian system. In legal theory, the ethnic character of international conflicts is generally of little importance. Ethnicity may be a feature of a minority group asserting claims to self-determination, but membership in an ethnic group is not in itself a basis for asserting particular claims under international law. Yet, Wippman has no doubt that "virtually all of the central issues arising out of ethnic conflict implicate key aspects of international law and, from a lawyer's standpoint, should be regulated by international law."⁵⁰ Indeed, these issues go to the heart of international law because they call into question the legitimacy of States and governments. At the same time, however, international law is faced with the intractable problem that

49. WIPPMAN, *supra* note 1, at 1.

50. *Id.* at 2.

no consensus on the definition of “peoples” entitled to self-determination exists, since group identity remains forever contextual and subject to change.

There are two related elements, however, common to definitions of ethnicity. First, a group invariably shares a belief in a common origin, based on such attributes as language, race, religion, and other distinctive cultural mores.⁵¹ Second, a group often shares a common culture, different from the society at large, which imbues it with a sense of common history and forms it into a natural community.⁵² Thus, the best that we can do with a definition of an ethnic group is to say that it is a large group that adheres to a common origin and shared culture. But one difficulty still remains. As Wippman himself recognizes, “there is considerable truth to the view that ethnic identity is a malleable and socially constructed phenomenon: ethnic boundaries may shift over time; ethnic groups may be mistaken about their history and ancestry; . . . and ethnic groups can be constructed and deconstructed by patterns of migration, conquest and assimilation.”⁵³ So what is all the fuss about? Wippman provides the answer: it is the capacity for communal solidarity and political mobilization that makes ethnic affiliations different from other kinds of group identifications and that forces many authors to regard ethnic groups as “primary” and “natural” but other forms of associations as secondary.⁵⁴ Competing sources of political loyalty are preempted by the strength of ethnic cleavages. For this reason, ethnic ties constitute a more obvious claim to establishing independent political communities.⁵⁵

The first essay of Part I is by Nathaniel Berman.⁵⁶ His essay argues for a new international law on nationalism, based on a sense of historical awareness. This leaves little doubt that the international legal response to ethnonationalist claims has been tawdry, that there has been disagreement on what is meant by the identity of peoples, and that in any event, international law has been used by the great powers to construct identity. Berman explains this by observing that “[i]n order to build an account of a particular nationalist conflict, international law projects onto the protagonists a set of historically contingent

51. *Id.* at 3.

52. *Id.* at 4.

53. *Id.* (quoting Robin M. Williams, Jr., *The Sociology of Ethnic Conflicts: Comparative International Perspectives*, 20 ANN. REV. SOC. 49, 51, 58 (1994)).

54. See Anthony Anghie, *Human Rights and Cultural Identity: New Hope for Ethnic Peace?*, 33 HARV. INT'L L.J. 341, 345 (1992).

55. See CLIFFORD GEERTZ, *THE INTERPRETATION OF CULTURES* 261 (1973).

56. Nathaniel Berman, *The International Law of Nationalism: Group Identity and Legal History*, in INTERNATIONAL LAW & ETHNIC CONFLICT, *supra* note 1, at 25-57.

categories—states, nations, peoples, minorities, religions, races, indigenous peoples, individuals, and so forth—a set whose elements and valorizations have changed over time.”⁵⁷ Cultural assumptions, not only contested within given periods, but also dramatically altered over time, inform the choice and application of protagonist positions. The new law of nationalism, evinced most prominently by the 1991 Draft Convention on Yugoslavia and the 1995 Dayton Agreements, avoids these pitfalls insofar as it eschews complete theoretical and doctrinal generalization, but embraces a new set of persuasive practices that implicate contestable and contingent projections. These convention documents are subject to competing interpretations, which involve contestable projections of cultural difference as well as challenges to the role of culture as a legitimator of international action.

The subsequent two essays deal with the moral significance of ethno-nationalist claims and the normative implications when mediated through international law. Lea Brilmayer authors the first of these essays.⁵⁸ She argues that nationalist claims are instrumentalist claims to the realization of communal values. Respect for the demands of nationalist groups for their communal autonomy is already a bulwark of the existing international law system. The institutional principles that have developed to protect and regulate communal autonomy, however, apply independently of the reasons for which the institutional principles were created. Should these two institutional principles yield to more direct means of furthering communal interest, asks Brilmayer, when the two conflict? Brilmayer does not think so. She rejects the argument that an approach based on defeasible entitlements can reconcile the institutional and instrumental views of nationalism. First, if one side is actually entitled, then the other side must necessarily yield to its demands even where, as in the Middle East or in Eastern Europe, there are practical reasons for a compromise. Second, the language of entitlements predicates one side to be right and the other to be wrong, even though rightness and wrongness are matters of degree, especially where a compromise is appropriate.

The way forward, according to Brilmayer, is for the international community to apply principles of corrective justice. The principle of corrective justice is already used to resolve all other problems in the international political system, so why not here as well? It is international morality that should

57. *Id.* at 26.

58. Lea Brilmayer, *The Institutional & Instrumental Value of Nationalism*, in *INTERNATIONAL LAW AND ETHNIC CONFLICT*, *supra* note 1, at 58-85.

shoulder the job of identifying ideals. The ideal at the moment is to recognize and promote the cause of corrective justice and to differentiate between nationalist claims that are based on justice and those that are based on prejudice, self-interest, or misunderstanding. This argument is morally attractive. But is it practically feasible? We have already seen from Nathaniel Berman's essay that international law has been critical in stipulating protagonist positions simply because they are culturally determined by those in a power to determine them, no matter how contested or materially inaccurate these stipulations. If international law has played a role in fixing or "rigging" ethnic identity, it has surely also played the same role in determining questions of corrective justice. That is to say, its views about corrective justice are inclined to be distorted for the same cultural reasons. Nationalists can, at present, claim with some historical credibility that corrective justice as a principle has singularly been denied them, on the grounds that under international law they are entitled to nothing because they are not internationally recognized States, even where other political groupings have been able to assert more acceptable claims to territorial sovereignty.

Fernando R. Teson argues in his essay⁵⁹ that group rights can only be justified by facts and circumstances external to the group, such as the necessity to escape State oppression or the right to vindicate prior historical title. In his view, international law should not favor rights of ethnic groups over recognized individual human rights simply because of the existence of shared particular racial, linguistic, or cultural traits. Teson argues that claims to ethnonationalist rights are flawed for two reasons. First, they assert self-determination on behalf of groups based on nonvoluntary factors, such as some common ethnic trait. Second, they assert that as a matter of right, political and ethnic boundaries must coincide. Both views are false, in his view, because the definition of a people in terms of a shared history overlooks the problem of historical discontinuity, and ethnic identity, as a political normative principle, differentiates between belongers and nonbelongers and paves the way toward ethnic cleansing. Nations, in fact, are not predetermined. As Ernest Gellner has observed, the concept of a nation is spurious.⁶⁰ It is the ideology of nationalism that engenders nations, not the other way around. Languages and cultures are

59. Fernando R. Teson, *Ethnicity, Human Rights, & Self-Determination*, in INTERNATIONAL LAW AND ETHNIC CONFLICT, *supra* note 1, at 86-111.

60. See ERNEST GELLNER, NATIONS AND NATIONALISM (1983).

invented and reinvented selectively to justify particular political arrangements.⁶¹ But there is also a more acceptable face of ethnic claims based on community rights that retains the moral ends served by States. This moderate view is Communitarianism.

Communitarianism places moral value in the group and regards collective rights as irreducible to individual rights. Its best exposition has come from an article in 1990 by Avishai Margalit and Joseph Raz.⁶² They argue that the right to self-determination is based on the wider value of self-government. Self-government itself is justified instrumentally by reference to the self-governing group's members. Not every group has the right to self-determination. Only those groups that can be called "encompassing groups" have this right. These are groups with communitarian requirements such as a common culture and a common character. Their characteristics include mutual recognition and self-identification by their members. Once the group has qualified, it will have the right to determine whether it should be self-governed, but that decision will be made in the interests of both its own members and the interests of minorities within the group. This means that the overwhelming majority must want self-government.⁶³ However, under Communitarianism, self-determination is not reducible to Liberal notions of political consent because it is "a group right, deriving from the value of a collective good, and as such opposed in spirit to contractarian-individualistic approaches to politics or to individual well-being."⁶⁴ Margalit and Raz thus reject the nationalist approach to self-determination because they view self-government as purely instrumental. The nationalist perspective, by contrast, treats individual rights and interests as derivative of, and so subordinated to, the original notion of community. Margalit and Raz see self-government as serving the individual well-being of group members. Their view is, therefore, very similar to that of Michael Walzer who privileges communal integrity over political morality, but only as a function of the rights and interests of individuals.⁶⁵

Teson disagrees with this clever synthesis of two seemingly irreconcilable perspectives of the individual and the group. He does so by arguing that Margalit and Raz's model is basically not liberal but communitarian. He gives

61. See *id.* at 55-56.

62. Avishai Margalit & Joseph Raz, *National Self-Determination*, 87 J. PHIL. 439 (1990).

63. *Id.* at 458.

64. *Id.* at 456-57.

65. Michael Walzer, *The Rights of Political Communities*, in INTERNATIONAL ETHICS 165, 181 (Charles R. Beitz et al. eds., 1985).

two reasons: first, the encompassing groups entitled to self-determination undergo definition through terms of essentially nonvoluntary traits; and second, since it is the collective will to self-government that counts, the ultimate good of the group is defined as a collective good, not an individual one. For Teson, therefore, Margalit and Raz's model is still illiberal. Teson takes this idea further. He believes that the attempt to put individual rights alongside group rights is misconceived. He takes issue with Communitarians like Will Kymlicka⁶⁶ and Alan Buchanan⁶⁷ who say that Liberalism can and should accommodate group rights because what they call group rights "are really instances of social policies that they believe should prevail over claims of individual rights."⁶⁸ Teson is arguably incorrect in his critique. What if the argument to group rights is based on a people's actual consent and actually expressed preferences? If consent is a precondition of liberal theory, then consent on an issue of self-determination must go to the identification of a right in the liberal sense. How, then, can we meaningfully talk of non-Western people in the Third World who do not wish to give absolute primacy to individual rights but consent to the security and dignity afforded by communitarian rights?⁶⁹ Teson seems to be accepting consent in one context but denying it in another. Teson's conclusions flow naturally from these premises. There are, he says, no moral collective rights. There is no inherent dignity in the State as a form of political organization. But there is an intrinsic dignity to a person, as a person, that is fundamentally absent in the State, as a man-made creation. Liberalism's commitment to universality and human commonality mean that there is no right to be governed by members of one's own race. There is only a right to live in freedom and equality. This governance by one's own people is not a *sine qua non*. Only for weighty practical and pragmatic reasons can collectivism trump individual rights.

So far, so good. But what are these reasons? Teson courts inconsistency here too. Although he offers the need to avert ethnic conflict or to escape State oppression as two such cogent reasons, he also curiously gives the desire to vindicate a prior historical territory as another. This is inconsistent with his framework of values. It is true that Teson poses thoughtful questions here: How immediate was the historical wrong? How alive has the claim been kept?

66. WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP* 34-48 (1995).

67. BUCHANAN, *supra* note 5, at 48-52.

68. Teson, *supra* note 59, at 102.

69. See Juss, *supra* note 48.

Are there new settlers? Has there been adverse possession? How serious was the wrong? But to assert territoriality as a valid reason for collective rights not only confuses historical discontinuity, but more seriously undermines that very principle of universality and human commonality that Teson uses to reject rights based on ethnicity. But there are also more practical reasons for opposing arguments based on vindication of a prior historical title which Teson does not handle. In practical terms, how far, for example, can the conflicts of Israel, Ireland, and India be resolved on this footing?

Steven Ratner's contribution develops these arguments further under a different guise.⁷⁰ His argument is that in deciding whether the international community should give sympathetic consideration to the demands of substate ethnic groups who demand a revision of State boundaries, the colonial legacy should be discarded. Colonialism postulated the doctrine of *uti possidetis* implying that new States gaining freedom in Africa and Asia should adhere to the boundaries they held at independence. Ratner argues that this anachronistic doctrine should not govern contemporary cases of State dissolution or secession. It will only be a recipe for disaster in the future. Instead, new States, such as those emerging from the fall of the Iron Curtain earlier this decade, should adopt only those boundaries that give them the optimum chance for stability and democratic rule in the family of nations. This idea may well be right. Ratner, however, does not discuss the fact that colonial government—however undemocratic and lacking in respect for human rights it may have been—was often predicated on adequate representation in the legislature of all the composite groups of affiliations through a predetermined quota of seats. This often helped contain and quell communal disaffection. Any new State emerging from the wreckage of recent conflict would do well to learn lessons from this, particularly if they contain national minorities.

The final essay in Part I is by Anne-Marie Slaughter.⁷¹ She does not ask how international law responds to ethnic conflict, but examines the ways in which ethnic conflict is likely to shape international law. Her approach

treats ethnic conflict as an empirical fact, a historical phenomenon, a contemporary curse. On the assumption that

70. Steven R. Ratner, *Ethnic Conflict and Territorial Claims: Where Do We Draw a Line?*, in INTERNATIONAL LAW AND ETHNIC CONFLICT, *supra* note 1, at 112-27.

71. Anne-Marie Slaughter, *Pushing the Limits of the Liberal Peace: Ethnic Conflict and the "Ideal Polity,"* in INTERNATIONAL LAW AND ETHNIC CONFLICT, *supra* note 1, at 128-44.

international law is the skin of international society, a set of efforts to respond normatively and potentially coercively to a historically contingent set of problems, the fact of international conflict will be—is being—recorded in international legal norms.⁷²

She focuses on the larger implications for the international legal order of group rights and the quest for political settlement, and observes how the impact of ethnic conflict on human rights law will mean the addition of group rights to individual rights. Slaughter envisions that the fundamental change to the international legal order will come from two dimensions. First, there are emerging links in the form of a permanent structural bridge between domestic and international institutions. This is exemplified in the links between the International Criminal Court for the former Yugoslavia (ICTFY) and the domestic courts. These create quite a different architecture for the international legal system because it forges vertical bridges from States to their supranational counterparts. Second, there is the rise of a stylized liberal State as the “ideal polity,” designed to assure both domestic and international peace and prosperity. This ideal polity appears, at a regional level, in the political influence that Western European States exercise over Central and Eastern European leaders who want to join the European Union. Slaughter sees this as heralding a new post-Westphalian order. She rightly concludes that the nationalism of the nineteenth century has become the ethnic conflict of the twentieth century and that group rights will have to become international law’s long-term response to ethnic conflict. It is difficult to disagree with this conclusion, especially given my analysis of the *Dawkins* case.

The first chapter in Part II is by David J. Scheffer, who looks at the U.N. interventions in ethnic conflict situations.⁷³ The basic problem is that State sovereignty is still the cornerstone of the international legal system, and it poses a formidable obstacle to humanitarian intervention. It is codified in the U.N. Charter and it protects States from outside interference. Repressive governments rely upon it readily. Yet, who can ignore the plight of ever-increasing international refugees? Here the tension between sovereignty and humanitarian intervention is particularly acute. The ethnic Albanians in

72. *Id.* at 128.

73. David J. Scheffer, *U.N. Engagement in Ethnic Conflicts*, in INTERNATIONAL LAW AND ETHNIC CONFLICT, *supra* note 1, at 147-77.

Kosovo have been the latest group to feel this tension. Scheffer's analysis is particularly valuable as he considers the various ways in which the United Nations engages in ethnic conflicts. His analysis spawns hortatory pronouncements to military interventions. He discusses the evolving legal bases for each and every engagement. What is particularly interesting is his treatment of humanitarian intervention. He points out that this is the most significant action that the U.N. can take in connection with ethnic conflicts. With the end of the Cold War and the escalation of ethnic conflicts, Scheffer believes that it is clearly necessary to reach beyond traditional definitions of humanitarian interventions—both justifiable and essential—to address modern humanitarian challenges. He poses four critical questions. First, must there be a threat to international peace and security for the U.N. to consider either nonforcible or forcible humanitarian intervention? Second, what circumstances should give rise to a right of nonforcible humanitarian intervention? Third, what circumstances should give rise to a right of forcible humanitarian intervention? Fourth, is collective authorization required to legitimize forcible humanitarian intervention? Scheffer, moreover, considers the costs of nonintervention, nonforcibly or forcibly, in an ethnic conflict. These are questions of profound importance and obviously Scheffer is not able to give them the kind of detailed attention that they clearly deserve in the space of a few pages. However, all credit is due to him for raising such weighty issues.

One may suggest here that in the current volatile situation in the world, every effort should be made to engage in nonforcible interventions, such as: diplomatic measures, General Assembly and Security Council resolutions, cross-border operations by non-governmental organizations (NGOs), negotiation of relief corridors and cease-fire zones, reports to the U.N., prosecution of crimes against humanity, arms embargoes, air drops of food and supplies, and so forth. The deployment of resources to this end should be a matter of first priority given the delicate balance in the world today. Forcible intervention should be used only as a matter of last resort, as happened in Kosovo in October 1998, when a last-ditch negotiated settlement forestalled military attacks against President Milosovic. Only when other measures fail and massive loss of life is imminent should the Security Council authorize force.

The next essay is by Antonia Handler Chayes and Abram Chayes who consider what international and regional agreements other than those brokered by the U.N. can really do to prevent and manage ethnic conflict.⁷⁴ They look at

74. Antonia Handler Chayes & Abram Chayes, *Mobilizing International and Regional Organizations*

the main international organizations and identify the relative strengths and weaknesses that affect the way ethnic conflicts are currently resolved. Of particular interest here are the methods developed by Organization for the Security and Cooperation of Europe (OSCE), which are the most novel and potentially the most effective. The traditional methods are based on confrontation, pressure, and advocacy. The OSCE, by contrast, builds on its existing structures for multilateral discussion, and it proceeds by dialogue rather than by enforcement.⁷⁵ This is a role well suited to it because it blends in with the structures of the OSCE, which provide a forum for multilateral discussion, operating on the basis of consensus and seeking to promote security through dialogue and not coercion.

The authors, however, also discuss the Council of Europe, which focuses on human rights issues in the context of a more general democratic mission and, therefore, only indirectly concerns itself with conflict prevention. Chayes and Chayes also consider trade and investment institutions such as the International Bank for Reconstruction and Development (World Bank), the International Monetary Fund (IMF), and the European Bank for Reconstruction and Development (EBRD). Although these institutions have a pool of economic resources far exceeding those available in bilateral assistance programs, their overall role has been limited in conflict resolution.⁷⁶ The essay also discusses the European Union, whose potential for resolving ethnic conflict lies basically in the denial of membership to any transgressor country. Here, the lure of extraordinary power, history, and values offers prosperity, peace, and freedom on an unprecedented scale.⁷⁷ Finally, the authors deal with international security organizations, NATO and the Western European Union.⁷⁸ NATO has contributed to conflict prevention in large-scale peace operations, such as the NATO-led multinational force in Bosnia in support of the Dayton agreements. In the future, it may carry out small-scale military operations of crucial importance, which can play a part in coordination, communications, and logistics. As far as the latter is concerned, before the Dayton Accords,

for *Managing Ethnic Conflict*, in INTERNATIONAL LAW AND ETHNIC CONFLICT, *supra* note 1, at 178-210.

75. Diana Chigas et al., *Preventive Diplomacy and the Organization for Security and Cooperation in Europe: Creating Incentives for Dialogue and Cooperation*, in PREVENTING CONFLICT IN THE POST-COMMUNIST WORLD: MOBILIZING INTERNATIONAL AND REGIONAL ORGANIZATIONS 25, 27 (Abram Chayes & Antonia Handler Chayes eds., 1996). Diana Chigas is the director of the Conflict Management Group's Project on Preventive Diplomacy in the OSCE.

76. Chayes & Chayes, *supra* note 74, at 191.

77. *Id.* at 196-97.

78. *Id.* at 201-07.

traditional European security organizations had not played a significant role in managing ethnonational conflict. They were a product of the bipolar Cold War system and they were shaped by its history. Today, however, they are seeking to adapt to the new post-Cold War realities; their major test is the deployment of a force in Bosnia to implement the Dayton peace agreement. The authors conclude by arguing that what is required is strategic mobilization and coordination, and this is more likely to emerge from *ad hoc* interaction among international organizations and NGOs at work in particular situations. The model would have to be a nonhierarchical, team-based approach bringing together the capabilities and resources of the wide range of international organizations and NGOs in a particular conflict area. In so concluding, the authors are clearly synthesizing the best of the working and workable elements in the current apparatus of international conflict resolution today.

David Wippman's essay follows next.⁷⁹ He analyzes how internationally brokered settlements, by the U.N. and other organizations, are used with increasing frequency to preserve the territorial integrity of States deeply divided through the medium of power-sharing among the principal ethnic groups in those States. He offers both practical and principled reasons for advancing consociational political settlements. On a practical level, Wippman's argument is that such settlements are usually preferable to many other alternatives to settling communal disputes. Ethnic conflict can turn violent. The options then will be few and far between. Partition is often favored but is hardly the ideal solution because it will lead to population exchanges that will be coercive and violate human rights. On a matter of principle, Wippman argues that power-sharing mechanisms should be adopted as some of the emerging norms that should govern political participation in plural societies. For politically mobilized ethnic groups, these mechanisms are the best way to achieve peaceful democratic coexistence. Often they are the only ways in which ethnic groups can maintain their identities and yet still participate in the life of the larger community. Indeed, from their perspective, an exclusive focus on individual rights can foster either an unwanted assimilation into the dominant society or political marginalization and alienation. Wippman thus reminds us that consociationalism is necessary because pluralist democracy is unlikely to flourish in a society that is deeply divided along ethnic lines. Consociationalism may be at loggerheads with Liberalism, but it is still a form of democracy. It

79. David Wippman, *Practical and Legal Constraints on Internal Power Sharing*, in INTERNATIONAL LAW AND ETHNIC CONFLICT, *supra* note 1, at 211-41.

is therefore necessary to add specific protections for minority rights to various international legal instruments because ethnic dilemmas pose special problems.

Essays by Ruth Wedgwood, Lori Fisler Damrosch, and Michael Platzer concentrate on how international law protects individuals and groups from organized violence in situations of ethnic conflict. Wedgwood⁸⁰ makes the unassailable point that it is difficult to see why international law outlaws the use of force to settle disputes between States, but not *within* States. International law should surely extend, in her view, the prohibition against the use of force contained in Article 2(4) of the U.N. Charter to civil wars as well. Lori Fisler Damrosch⁸¹ takes this discussion further and examines the ambiguities associated with the existing legal prohibition of genocide and the reasons why the international community has failed to prevent and punish the culprits engaging in genocide. Her contribution is particularly valuable because she suggests ways in which an acceptable definition of genocide can be matched with a more effective enforcement mechanism.

Michael Platzer,⁸² in turn, deals with a problem that is inescapable in all large-scale situations of ethnic conflict, namely, the creation of both international refugees and internally displaced persons. Platzer argues that the answer for the refugee crisis in any given situation has to be sought in broader political solutions. The current use of such fashionable devices such as the grant of temporary protection will not do. This is surely right. Most analysts advocating temporary protection policies overlook the fact that most refugee situations are not short-term but may go on for years, and even generations. What Platzer's thoughtful essay does not consider, however, is the perception of refugees as potential immigrants by the receiving territory which is committed to maintaining strict immigration controls. This perception makes for a more forbidding and less welcoming attitude from the wealthier northern nations of the world, adding to the long-term plight of refugees.⁸³

In the penultimate chapter of the book, Dianne F. Orentlicher⁸⁴ argues that

80. Ruth Wedgwood, *Limiting the Use of Force in Civil Disputes*, in INTERNATIONAL LAW AND ETHNIC CONFLICT, *supra* note 1, at 242-55.

81. Lori Fisler Damrosch, *Genocide and Ethnic Conflict*, in INTERNATIONAL LAW AND ETHNIC CONFLICT, *supra* note 1, at 256-79.

82. Michael Platzer, *Temporary Protection of a Persecuted People*, in INTERNATIONAL LAW AND ETHNIC CONFLICT, *supra* note 1, at 280-95.

83. See Satvinder Juss, *Toward a Morally Legitimate Reform of Refugee Law: The Uses of Cultural Jurisprudence*, 11 HARV. HUM. RTS. J. 311 (1998).

84. Diane F. Orentlicher, *Citizenship and National Identity*, in INTERNATIONAL LAW AND ETHNIC CONFLICT, *supra* note 1, at 296-325.

the ethnic conception of nationality is inapposite in a conception of international law today, which preserves a presumptive entitlement to citizenship based on habitual residence in a territory. So the relevant question today is not so much whether ethnic groups should have claims against the State, but whether States should owe obligations to those individuals who are long-time residents in its territory. Orentlicher takes an approach that is different from Brilmayer and Teson, both of whom analyzed the claims of ethnic groups against States. Is Orentlicher's approach of value? Certainly, Orentlicher provides us with a powerful critique of the nationality laws adopted by the former Baltic States of the Soviet Union, namely, Estonia, Latvia, and Lithuania, all of which have disenfranchised groups from citizenship on ethnic grounds. Yet, as Orentlicher herself recognizes, there is at least one international legal judgment that suggests that the bonds of ethnicity may shape a State's naturalization laws,⁸⁵ and both the Council of Europe and the U.N. have been chary of outright condemning the laws of these States. It is doubtful, therefore, whether there is an unequivocal trend in favor of habitual residence as the hallmark of citizenship laws.

The final essay is by Tom Farer.⁸⁶ It is a fitting finale to a work that embraces such a wide range of topics. Farer adopts a jurisprudential viewpoint. He highlights the overwhelming importance of maintaining respect for human rights. In addition, he contrasts the methodology of the authors in this volume with the approaches of an earlier generation of international law scholars who commonly adopted the Realist and Positivist approaches. Farer organizes the chapters in this volume into four general positions and then recommends a syncretic approach to ethnic conflict. He borrows this from Allen Buchanan's book on secession.⁸⁷ He rejects the traditional dichotomy between the Realist and Positivist approaches. Farer asserts that "the syncretists accept no single criterion as sufficient for the appraisal of nationalist claims. . . . What finally distinguishes the syncretic approach is its insistence on weighing in every case the interests of the dominant majority (except where they rest on predation), the aggrieved minority, and those of third parties as well."⁸⁸ In this way, Farer

85. See Advisory Opinion No. 4, *Amendments to the Naturalization Provisions of the Constitution of Costa Rica*, Inter-Am. Ct. H.R., San Jose, No. OC-4/84 (Jan. 19, 1984), reprinted in 5 HUM. RTS. L.J. 161, 173 para. 60 (1984).

86. Tom Farer, *Conclusion: What Do International Lawyers Do When They Talk About Ethnic Violence and Why Does It Matter?*, in INTERNATIONAL LAW AND ETHNIC CONFLICT, *supra* note 1, at 326-46.

87. BUCHANAN, *supra* note 5.

88. Farer, *supra* note 86, at 345.

ensures that his approach is most acceptable to all the protagonists in a group conflict because it is essentially characterized by compromise. Whether or not this will endear itself to the uncompromising who remain caught up in ethnic disputes all over the world is, of course, a very different matter.

So what then are we to make of this book? Wippman deserves our thanks and congratulations for compiling a book of such signal importance. His book makes us realize the challenges that face international law today. We realize that international law is woefully inadequate in providing the appropriate legal responses. There is not even an established version of the right to self-determination, even though "the right of peoples and nations to self-determination" was first recognized by the U.N. General Assembly in 1950.⁸⁹ There is no right in contemporary international law to secession even as a last resort. Yet, international law does not prohibit revolution, civil war, or ethnic conflict. What it does prohibit is the involvement of foreign powers in a conflict. Why this absurdity? The reason is that the international legal response is determined by fundamental norms. One is the right of States to protect their territorial integrity and the other is the plainly incompatible right of peoples to self-determination. The failure to synthesize these two norms has contributed to the modern trend of favoring minority rights. Minority rights preserve territorial sovereignty and yet protect the pluralism and diversity inherent in group rights. It is the alternative to full self-determination. The U.N. General Assembly in 1992 adopted the Declaration on the Rights of Persons Belonging to National or Ethnic Religious, and Linguistic Minorities with the purpose of insisting that States should protect group identity of minorities, who should be afforded full opportunities and political, economic, and cultural participation in the State. The Declaration is based on a language of individual rights, but it recognizes that the protection of ethnic minorities is essential to "the political and social stability of the States in which they live."⁹⁰ Perhaps, ultimately, the hope for mankind in the next millennium lies in the secure protection of minority rights. It is the hope of such democracies as

89. G.A. Res. 421, U.N. GAOR, 5th Sess., Supp. No. 20, at 43, U.N. Doc. A/1775 (1950). The 1960 *Declaration on the Granting of Independence to Colonial Countries and Peoples* saw the General Assembly define self-determination as a right for peoples subject to alien or colonial domination. See G.A. Res. 1514, U.N. GAOR, 15th Sess., Supp. No. 16, U.N. Doc. A/4684 (1960). The *Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Character of the United Nations* of 1970, which was adopted by consensus, again confined self-government to the rights of colonial societies. See G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No. 28, at 124, U.N. Doc. A/8028 (1970). But see WIPPMAN, *supra* note 1, at 11.

90. G.A. Res. 135, U.N. GAOR, 47th Sess., Supp. No. 49, Annex, at 211, U.N. Doc. A/47/49 (1992).

Britain and the United States, which have hitherto escaped ethnic violence despite sizeable group minorities. It is certainly the hope for the future development of a coherent body of international law.

